



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 19, 2004

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: WC Docket No. 04-313; CC Docket No. 01-338
*In the Matter of Unbundled Access to Network Elements; Review of the Section
251 Obligations of Incumbent Local Exchange Carriers*

Dear Ms. Dortch:

The Public Utility Commission of Texas respectfully files the attached Reply Comments in the above-referenced dockets.

Respectfully submitted,

/original signed/

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Attachment

Attorney for the Public Utility Commission
of Texas

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Unbundled Access to Network Elements)	WC Docket No. 04-313
)	
Review of the Section 251 Unbundling)	CC Docket No. 01-338
Obligations of Incumbent Local Exchange)	
Carriers)	

**REPLY COMMENTS OF THE PUBLIC UTILITY COMMISSION OF TEXAS
ON THE PETITIONS OF SBC AND BELL SOUTH
REGARDING THE FILING REQUIREMENTS OF SECTION 252**

The Public Utility Commission of Texas (“Texas PUC”) respectfully submits these reply comments on SBC’s and BellSouth’s petitions for a declaratory ruling to restrict the scope of the filing requirement in section 252(a)(1) of the Act.

In its initial comments, the Texas PUC explained that the petitioners had failed to demonstrate the need for a preemptive federal declaratory ruling on section 252(a)(1). The petitions are grounded on the alleged need to prevent State commissions from requiring the filing of the SBC/Sage Telecom agreement. That agreement, however, must be filed regardless of the declaration sought by the petitioners.

Recent developments confirm this point. On October 7, 2004, a federal district court upheld the Texas PUC’s determination that the SBC/Sage Agreement must be filed pursuant to section 252.¹ On October 11, 2004, SBC and Sage duly filed their agreement with the Texas PUC pursuant to sections 252(a)(1) and (e)(1). As it does for all negotiated agreements, the Texas PUC provided an opportunity for public comment and will approve the agreement absent

¹A copy of the court’s opinion was filed in this docket on October 8, 2004. For convenience, a copy is also attached to these reply comments.

a finding that the agreement discriminates against another telecommunications carrier or is not consistent with the public interest, convenience, and necessity.

The Commission has a general policy of non-interference with the State commissions' interpretation and implementation of the section 252 filing requirement.² As these recent events underscore, the SBC and BellSouth petitions present no valid reason to break from that policy.

Should the Commission nevertheless decide to issue a declaratory ruling, the Commission should reject the petitioners' restrictive reading of section 252(a)(1). As discussed in the Texas PUC's initial comments, the statutory language, the courts' description of the statutory scheme, and the Act's policy goals all support the interpretation that negotiated agreements to provide network elements should be filed under sections 252(a)(1) and (e)(1) irrespective of whether the ILEC has a specific duty under section 251 to provide the elements in question.

Respectfully submitted,

THE PUBLIC UTILITY COMMISSION OF TEXAS

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²See Memorandum Opinion and Order, *In the Matter of Qwest Communications Int'l, Inc.*, FCC 02-276, 17 FCC Rcd. 19337 at *19341-42, 2002 WL 31204893 at *1934-42 (rel. Oct. 4, 2002).